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7 Attorneys for Defendant
8 Simon Yuan

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 SIMON YUAN,

16 Defendant.

Case No. CR 07 00338 JF

**DECLARATION OF
SCOTT H. FREWING**

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18
19 I, Scott H. Frewing, hereby make the following Declaration under penalty of perjury under
20 the laws of the State of California and the United States. I declare that the facts stated herein are
21 true, correct and within my own personal knowledge. If called as a witness and sworn I could and
22 would testify to the following:

23 1. I am a partner at Baker & McKenzie LLP, counsel to Defendant Simon Yuan. I have
24 known Mr. Yuan for ten (10) years as a result of being a frequent patron of the Hunan Garden
25 Restaurant which is located one block from my office.

26 2. During the course of our representation of Mr. Yuan my colleagues and I have
27 reviewed various documents, including tax returns, related to the Hunan Garden Restaurant. In
28 addition, I have personally spoken with John Hwang the return preparer for Hunan Garden for the

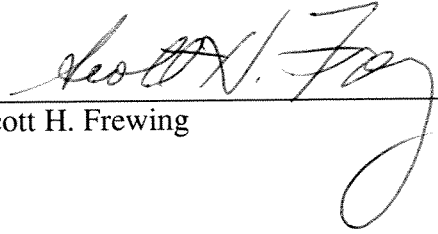
1 period prior to June 2005, and Carol Shao, the return preparer for Hunan Garden Restaurant since
2 June 2005.

3 3. Attached as **Exhibit A** is a true and correct copy of a U.S. Department of the
4 Treasury Form 941 for the April/May/June quarter of the 2006 calendar year for the Hunan Garden
5 Restaurant. Attached to the Form 941 is a Form 941c, which is the form that the Internal Revenue
6 Service requires that employers use to amend or otherwise correct information on prior Forms 941.
7 The Form 941c includes an attachment summarizing the adjustments made by Hunan Garden
8 Restaurant for the calendar quarters ending March 31, 2003, June 30, 2003, September 30, 2003,
9 December 31, 2003, March 31, 2004, June 30, 2004, September 30, 2004, December 31, 2004, June
10 30, 2005 September 30, 2005, and December 31, 2005. Page 1 of the attachment to the Form 941c
11 lists the employees to whom Hunan Garden Restaurant paid the extra reported wages, and page 2 of
12 the attachment to the Form 941c includes a quarter-by-quarter summary of the additional wages
13 reported on the Form 941c. **Exhibit A** also includes copies of two checks from Hunan Garden
14 Restaurant payable to the United States Treasury in the amounts of \$56,098.00 and \$21,037.00 for
15 the 2004 and 2005 tax years, respectively.

16 4. After Hunan Garden Restaurant filed the Form 941 and accompanying 941c
17 described immediately above in paragraph 3 of this Declaration, my colleague Elizabeth Chien and I
18 had several conversations with Internal Revenue Service employees regarding the Internal Revenue
19 Service's crediting of the additional taxes paid to the IRS account for the Hunan Garden Restaurant.
20 Specifically, we spoke with IRS employees Pam Allmer and Janet Cevering regarding initial
21 confusion and errors that led to the Internal Revenue Service recording that Hunan Garden
22 Restaurant had additional payroll tax liabilities but not crediting Hunan Garden Restaurant with the
23 accompanying payments. Following a series of conversations between Ms. Chien, myself, and Ms.
24 Cevering of the IRS, Hunan Garden Restaurant received a notice from the Internal Revenue Service
25 dated March 26, 2007, stating that Hunan Garden Restaurant account did not have a balance due
26 from the Form 941. Attached as Exhibit B is a true and correct copy of the March 26, 2007 notice.

1 Under penalties of perjury, I declare that the above information, to the best of my knowledge
2 and belief is true, correct and complete.

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5 Dated: January 2, 2008



Scott H. Frewing